

What happens if a facility needs to add different technologies to their treatment system in the future?

If a facility plans to add new production to their PFPR operations, they must incorporate the appropriate P2 practices into their operations and identify the appropriate or equivalent treatment technology(ies) to be put in place if the new production generates wastewater to be discharged. The P2 practices and treatment technologies must be certified (e.g., at the time of submittal of the periodic certification) and approved by the control/permitting authority before the facility can begin to discharge wastewater associated with the new production.

If a facility operates a treatment system consisting of hydrolysis and activated carbon, and decides to drop hydrolysis and only run activated carbon, would the facility require approval first?

If the Table 10 technologies for the pesticide active ingredients present in the wastewater are both hydrolysis and activated carbon, then the facility would need to show that activated carbon is *equivalent* to hydrolysis for those pesticide active ingredients whose listed technology is hydrolysis before removing the hydrolysis unit from the treatment system. In addition, the facility must also demonstrate that the activated carbon system would be well operated and maintained. This would include reevaluating the frequency of carbon changeout to account for the carbon removing more pesticide active ingredients (and therefore becoming saturated more quickly).

Well Operated Treatment Systems

If a facility adds a new product (e.g., diazinon), which has a Table 10 technology of hydrolysis, can the facility use different surrogates (e.g., half-life, treatment time, pH, temperature) for that one pesticide active ingredient than are being used for the rest of the system (e.g., TOC and carbon change-out for activated carbon units)?

Yes. However, a surrogate parameter that is approved for a facility's treatment system will depend on the treatability data used to support the use of the surrogate and the ability to show a relationship in the data between the pesticide active ingredient and the surrogate.

Compliance

Baseline Monitoring Report

Is guidance available for completion of the baseline monitoring report (BMR)?

See Appendix E for EPA's guidance memorandum on completing the BMR. The BMR was due on July 7, 1997 for existing indirect dischargers.

To whom is the BMR submitted and where is this stated?

The BMR is submitted to the control authority. For states that have approved pretreatment programs, the BMR goes to the POTW/control authority. In other states, the BMR may be submitted to the regional EPA office. Section 403 of Title 40 of the

Does the PFPR regulation require monitoring, other than priority pollutant monitoring for the BMR?

CFR, as well as EPA Pretreatment Bulletin #13 (included in Appendix E), discuss these issues.

How many samples are required for the BMR?

No. Facilities will be able to generate a list of pesticide active ingredients based on the products made at their facilities. EPA guidance has suggested that monitoring for priority pollutants or other surrogate parameters (e.g., TOC) would be helpful since facilities may not always be aware of sources of these pollutants in their wastewater, particularly pollutants that may be present through the addition of inert materials to the formulated products.

40 CFR 403.12(b)(5)(iv) states, "The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph." The type of sample will depend on the nature of the pollutant as described in 40 CFR 403.12(b)(5)(iii), which states "a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples must be obtained through flow-proportional composite sampling techniques where feasible. The Control Authority may waive flow-proportional composite sampling for any Industrial User that demonstrates that flow-proportional sampling is infeasible. In such cases, samples may be obtained through time-proportional composite sampling techniques or through a minimum of four (4) grab samples where the User demonstrates that this will provide a representative sample of the effluent being discharged." If the process produces a discharge that is a homogenous batch, one grab sample may be taken.

If a facility is covered under other categorical standards and already has a BMR on file with the control authority, do they need to submit a new BMR? Does this also apply to PFPR/manufacturing facilities that commingle wastewater from PFPR and pesticide manufacturing operations and that previously submitted a BMR for compliance with the pesticide manufacturing regulations [58 FR 50637]; can they revise that BMR or do they have to perform separate BMR monitoring for their PFPR wastewater?

At a minimum, the facility should update the non-monitoring sections of the BMR (e.g., process information, flow). In addition, if the facility is choosing the P2 alternative, they would need to list the P2 practices, if any, currently in place that affect their PFPR production/wastewaters. The facility may have to submit monitoring data for pollutants that were not present at the time they submitted the BMR for the pesticide manufacturing effluent guidelines; otherwise, historical monitoring would suffice.

In submitting the BMR, do PFPR/manufacturing facilities have to test commingled wastewater for the 126 priority pollutants or for specific pesticide active ingredient pollutants listed in Table 10?

In submitting a BMR for the PFPR regulation, facilities must monitor only for priority pollutants. Specific pesticide active ingredients used in PFPR products must be listed in the BMR, but do not require testing.

Can a facility use toxicity measurements for their BMR if they haven't been testing the specific pesticide active ingredients?

The BMR does not require pesticide active ingredient-specific measurements, although if a facility is choosing the P2 alternative, they should list the pesticide active ingredients that are present (or believed to be present) and monitor for the priority pollutants. Facilities are certainly welcome to provide additional data (e.g., toxicity measurements).

P2 Alternative/Allowable Discharge

Can you choose zero discharge for an individual source?

Yes, as long as you clearly indicate it in your compliance paperwork.

If a direct discharging PFPR facility chose to comply with the PFPR effluent guidelines by meeting a zero discharge limitation and were issued an NPDES permit that included zero discharge for their PFPR wastewaters, at the time of permit renewal or reissue, could that facility choose to switch to the P2 alternative? Would there be any "backsliding" implications?

Yes, a facility could switch from zero discharge to the P2 alternative at the time of permit renewal without invoking any regulations dealing with "backsliding," as it would not apply in this situation.

"Backsliding" is a term that has been used to describe a circumstance where a facility has an NPDES permit that lists certain effluent limitations and upon renewal/reissue of the permit, the "new" effluent limitations are made less stringent than those in the previous permit. In general, "backsliding" is not allowed. The regulations that discuss "backsliding" are found at 40 CFR 122.44(l). These regulations discuss the renewal or reissue of NPDES permits (for direct dischargers) and say that the effluent limitations, standards, or conditions in the renewed/reissued permit "must be at least as stringent" as the effluent limitations, standards, or conditions in the previous permit. The regulations do provide several exemptions which would allow "backsliding" (e.g., circumstances have materially and substantially changed since the time the permit was issued).

However, EPA believes that the regulations of 40 CFR 122.44(l) ("backsliding") do not apply to the situation where a PFPR facility switches from zero discharge to the P2 alternative at the time of permit renewal. This is because EPA designed the zero discharge and P2 alternative limitations of the PFPR effluent guidelines (40 CFR 455.40) to be equivalent. Therefore, the P2 alternative is not only "at least as stringent" as zero discharge, but it is just as stringent.

At first it may seem counter intuitive that some wastewater discharge, even a very small amount, is just as stringent as zero discharge. However, as discussed in the PFPR effluent guidelines preamble to the final rule (61 FR 57518; November 6, 1996), EPA believes that when considering the potential cross-media impacts associated with zero discharge (e.g., impacts to air from contract hauling for off-site incineration of dilute, low-BTU-value, wastewaters), the P2 alternative may be more protective of the environment overall.

Necessary Paperwork

Are facilities required to complete the P2 audit tables (Tables A through C) and Tables D and E for compliance documentation?

No, facilities are not required to complete these tables. They are provided as a tool. However, if a facility chooses to complete them, they can be used to meet some of the paperwork requirements (see Chapters 4, 6, and 7 of this manual for more detail).

Who is the entity that conducts a P2 audit and regulates a facility?

The control authority (for indirect dischargers) or the permitting authority (for direct dischargers) enforces the PFPR rule. The P2 audit is one way of determining compliance with the rule; however, the P2 audit is not required by the rule. The P2 audit was designed as a tool for the facilities, control/permitting authorities, consultants, etc. to help organize the various pieces of information that will aid in making compliance decisions. A control authority/permitting authority may ask a facility to conduct such an audit, or may conduct the audit themselves. The P2 audit tables were designed so that they could be used as part of the compliance paperwork, but they are not required.

Who receives the initial certification?

The control authority/permitting authority receives the certification from facilities that choose the P2 alternative and that discharge or have the potential to discharge.

Under the General Pretreatment Program (40 CFR 403), certain sampling and analysis is required to be defensible (for enforcement procedures). How does that affect the analysis that would be conducted for the PFPR rule?

40 CFR 403.8(f)(2)(vi) requires the POTW to take care and establish procedures so that sampling data and analysis can be admissible in enforcement procedures. However, Part 403.12(g) requires that Industrial User (IU) sampling must be appropriate/representative and in accordance with 40 CFR 136. Therefore, Part 403 does not require IU sampling to be defensible in enforcement procedures. This means that the sampling performed by the IU for purposes of this rule (e.g., for collecting data to demonstrate that the wastewater treatment system is "well operated and maintained") must be appropriate and representative. However, other state or local regulations may also apply.

What kind of compliance paperwork is required for zero dischargers, including facilities that do not generate wastewater and facilities that totally reuse all wastewater generated?

If the facility does not have a “potential to discharge,” such as facilities that do not generate wastewater, they are not covered by the scope of the regulation; however, a facility may want to send a letter or certification statement to their POTW/control authority stating that they have “no potential to discharge.”

If the facility does have the “potential to discharge,” even if they are not actively discharging (which may be the case with facilities that totally reuse wastewater), the facility needs to complete a BMR. For the monitoring requirements portion of the BMR, they should indicate that they will be achieving zero discharge, and therefore, there is nothing to monitor.

If the facility is complying with zero discharge by demonstrating “nondetects” of pesticide active ingredients and priority pollutants, the BMR should contain monitoring data for the priority pollutants, as well as a list of the pesticide active ingredients expected to be used in production in the next 12 months.

According to the Section 403 regulations, paperwork must be kept on site for 3 years. How long must on-site compliance paperwork for the PFPR rule be kept?

PFPR facilities complying with the P2 alternative must keep the compliance paperwork necessary to document their current activities. In addition, facilities must keep “old” paperwork for the three-year minimum discussed in 40 CFR 403.12(o).

For on-site compliance paperwork, may a facility cross-reference other records at the facility, or does a separate copy of those records need to exist in their PFPR compliance file?

Facilities may cross-reference records in other parts of the facility (e.g., production records), but must be able to produce those records when requested by their permitting or control authority.

For the initial certification statement, do facilities need to use the certification statement listed in Section 403.6(a)(2)(ii)? Can the same manager who certifies under Section 403 also certify under the PFPR rule?

Facilities may use the following certification statement listed in Section 403, but they are not required to use that exact wording for compliance with the PFPR rule:

“I certify under penalty of law that this document and all attachments were prepared under my direction of supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Most importantly, the “responsible corporate official” (or general partner or proprietor or duly authorized official), as de-

fined in Section 403.12(l), must certify that the information is true and accurate.

The Initial and Periodic certification statements of the PFPR rule have the same signatory requirements as those listed in Section 403.12(l) of the General Pretreatment Regulations:

(l) *Signatory requirements for industrial user reports.* The reports required . . . shall be signed as follows:

(1) By a responsible corporate officer, if the Industrial User submitting the reports required...is a corporation. For the purpose of this paragraph, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) By a general partner or proprietor if the Industrial User submitting the reports required . . . is a partnership or sole proprietorship, respectively.

(3) By a duly authorized representative of the individual designated in paragraph (l)(1) or (l)(2) of this section if:

(i) The authorization is made in writing by the individual described in paragraph (l)(1) or (l)(2);

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the facility from which the Industrial Discharge originates, such as the position of plant manager, operator of a well, or well field superintendent, or a position of equivalent responsibility, or having overall responsibility for environmental matters for the company; and

(iii) the written authorization is submitted to the Control Authority.

(4) If an authorization under paragraph (l)(3) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of paragraph (l)(3) of this section must be submitted to the Control Authority prior to or together with any reports to be signed by an authorized representative.

If a facility certifies that no process wastewater pollutants will be detected in the effluent from their treatment, does that mean that the MDL is their compliance limitation? What if the facility certifies that their treatment system will result in an effluent below 10 g/L (or some other number)?

How is CBI that is included as part of compliance paperwork (either initial or periodic certification or other on-site compliance paperwork) handled? What can a facility claim as CBI? Will the confidentiality requirements described in 40 CFR 403 apply to on-site compliance paperwork required by the P2 alternative?

Can a facility claim both treatment system effluent and outfall effluent data CBI?

At times, facilities may be required to change to a new contract/toll formulator at a moment's notice due to unforeseen circumstances. Can a waiver be granted (from the local control authority) to the new contract/toll formulator for the 90-day notification?

This responsible corporate official can be the same person for both Section 403 and 455 certifications. Note that the timing of submittal of the PFPR Periodic Certification Statement and the Part 403 periodic compliance reporting have been coordinated so that a facility can submit them to the POTW/control authority at the same time (and have them signed by the same person).

If the facility chooses to meet zero discharge, then the limitation is zero, not the method detection limit. However, the facility can demonstrate zero discharge by achieving no detection of process wastewater pollutants. If the method detection limit decreases over time, the facility would still need to show no detection of process wastewater pollutants.

If the facility wishes to achieve compliance by meeting a number (e.g., less than 10 g/L), then that facility can choose to comply with the P2 alternative.

The POTW/control authority is authorized to view CBI, but they must have procedures in place to protect CBI from unauthorized public access. POTWs and control authorities have to allow access to the public at least to the extent that the EPA confidentiality regulations allow public access. 40 CFR 403.8(f)(1)(vii) requires POTWs (with approved pretreatment programs) to implement legal authority that complies with 40 CFR 403.14. 40 CFR 403.14(b) and (c) require that effluent data not be considered confidential, and all other information must be made available to the extent required under 40 CFR 2.302. Most POTWs have an allowance in their local ordinances for confidentiality.

Any data associated with the "point of compliance" cannot be held as CBI. Therefore, it depends on the point of compliance, which should be explicitly listed in the permit. The point of compliance in many regulations is upstream from a commingled outfall.

If the new toll formulator is performing any in-scope PFPR operations, then they do not need to provide a 90-day notification; however, they would need to notify the control authority of the "change of discharge" [40 CFR 403.12(j)] and would indicate this change in their PFPR periodic certification paperwork.

If the new toll formulator does not currently perform any PFPR operations, the toll formulator may need to meet zero discharge (e.g., through off-site disposal or through sending wastewater back to the facility through which they are con-

tracting) or store the wastewater until a proper control mechanism is in place.

Permit/Control Mechanism Issues

How does the POTW/control authority regulate pollutants if one production line is achieving zero discharge and another production line is complying with the P2 alternative and they are only sampling the discharge four times per year?

The final PFPR rule is different from other effluent guidelines and standards in that there is no set of limitations to meet for discharge. Therefore, the rule cannot be enforced by monitoring end-of-pipe pollutant concentrations. To ensure that the production line using the P2 alternative is complying with the rule, the control authority/permittee would need to tour the facility to determine that the P2 practices are in place and in use, that the treatment system is well operated and maintained, and that the paperwork is in place to document compliance.

Is it up to the discharger whether or not they are a discharger (i.e., whether they choose to meet zero discharge versus the P2 alternative, what treatment they will perform, etc.)?

These decisions are initially made by the discharger; however, approvals are needed/required by the control/permitting authority. Local jurisdiction can be more stringent, but not less stringent than the national guidelines and standards. Therefore, the final approach to complying with the PFPR rule is really up to both the discharger and the regulating authority. If the control authority does not respond to the discharger's compliance paperwork with an approval or a disapproval, the facility is still responsible for ensuring that they are in compliance with 40 CFR 455 Subcategory C requirements.

In the end, does the permittee come up with a mass- or concentration-based limit?

It is not necessary for the permittee to develop such a limit, although they may choose to do so if there are sufficient data and an appropriate analytical method for the specified pesticide active ingredient.

How much flexibility does a control authority/permittee have to modify a practice?

A control/permitting authority has the authority to use best professional judgement (BPJ) to modify any practice. In so doing, they should use the environmental hierarchy to promote pollution prevention practices first, followed by recycle/reuse, treatment, and finally disposal. In addition, the final rule enables permitting/control authorities to add or replace P2 practices specified in the rule with new or innovative practices that are more effective at reducing the pollutant loadings from a specific facility to the environment (see page 57526 of the preamble to the final rule in Appendix A).

Does the PFPR rule give the criteria the control authority/permitting authority can/should use in modifying practices?

As discussed in the answer to the previous question, the preamble to the final PFPR rule provides guidance to permittees/control authorities on the criteria for modifying P2 practices under the P2 alternative. See page 57526 of the preamble to the final rule in Appendix A.

If the control authority or permitter is touring a facility and finds that the plant is obviously not following a specified Table 8 practice, is that cause for an enforcement action?

If the facility has certified they are implementing a specific Table 8 practice, but the control authority or permitter observes that the practice is *not* being implemented or utilized, then this could be cause for an enforcement action. However, many PFPR facilities produce nonpesticide products on the same equipment as pesticide products. Therefore, the control authority/permitter should be sure that they are observing operations related to in-scope PFPR production before taking any action.

How do control authorities/permitting authorities use Table 10?

If a PFPR facility chooses the P2 alternative and generates wastewaters that require treatment prior to discharge following implementation of P2 practices, then the control/permitting authority can use Table 10 as one way to identify that the treatment being used is “appropriate.”

How do treatment decisions work and how does a permit writer determine limits for PFPR/manufacturing facilities?

If a PFPR/manufacturing facility chooses to comply with zero discharge, there is no allowance (“zero” allowance) given for pesticide active ingredients that they also manufacture (i.e., the limit is based solely on their manufacturing production). Non-manufactured pesticide active ingredients must not be detected in their effluent (i.e., the permit should specify zero discharge).

If the facility chooses to comply with the P2 alternative, the P2 practices would be included in the facility’s permit. The limitation for pesticide active ingredients that are also manufactured could be adjusted to include the facility’s PFPR production. If the pesticide active ingredient is not manufactured, that pesticide active ingredient would not require a specific limitation. See page 57528 of the preamble to the final rule in Appendix A for a detailed discussion of compliance for PFPR/manufacturers.

In order for a control authority to give a waiver for floor wash or the final rinse of a triple rinse, first, the wastewater must be unable to be reused and, second, the pesticide active ingredients in the wastewater must be at levels too low to be effectively pretreated and that will not cause interference at the POTW. How does the control authority determine the second condition?

Determining the levels at which the pesticide active ingredient is not effectively pretreated is based more on BPJ than on an objective number (e.g., the pesticide active ingredient concentration). EPA developed the waiver with the goal of providing some relief to facilities that were already implementing P2 practices by reusing all wastewater streams that were reusable, and that would otherwise have to build a treatment system to treat the inherently non-reusable wastewater streams (e.g., floor wash and a non-reusable final rinse of a triple rinse). Control authorities may look at a facility’s operations and determine that, if a facility has successfully implemented P2 practices, it can use the waiver to discharge whatever small amount of floor wash is left (after water conservation) or the final rinse of a triple rinse to the POTW when the volume of that final rinse exceeds the volume that is reusable.

How can an enforcement agency determine if a treatment system is well operated and maintained?

The determination of whether a treatment system is well operated and maintained will be based on the rationale and “method of demonstration” chosen by the facility and approved by the control/permitting authority. For example, if a facility chose an activated carbon adsorption treatment system based on treatability test data (including carbon saturation loading/carbon breakthrough curves) and used that data to establish a relationship between TOC and pesticide active ingredient concentrations, they might demonstrate that the system is well operated and maintained by monitoring TOC and documenting the frequency of carbon changeout. The enforcement agency would then be able to review the TOC data and carbon records to determine if the facility was complying with their method of demonstration.

Does a POTW/control authority need to monitor specifically for pesticide active ingredients to ensure that a facility is complying with the PFPR rule?

No, monitoring may not be economically feasible and there may not be analytical methods available for all pesticide active ingredients. Compliance with the P2 alternative may be shown through ensuring that P2 practices have been implemented, the appropriate treatment is in place and is well operated and maintained, and documentation has been prepared and is readily available at the facility.

If a facility chooses to comply with zero discharge through “no flow” of process wastewater, the POTW/control authority would mostly ensure compliance through facility inspection of the PFPR process areas. However, if a facility is complying with zero discharge by demonstrating non-detect levels of pesticide active ingredients and priority pollutants, analytical methods must exist and the POTW/control authority would monitor at a minimum for expected priority pollutants and those pesticide active ingredients used in PFPR production.

For a POTW/control authority to set more stringent limitations, do they have to show some basis (e.g., evidence of pass through)? If not, can industry sue?

POTWs/control authorities are required by Federal Regulations to develop local limits to protect against pass through and interference (40 CFR 403.5(c) and 403.8(f)(4)). This means the POTW/control authority must develop local limits that protect the treatment plant from pollutants that may upset the plant, pass through the plant untreated (or inadequately treated), may endanger the well being of workers, or would inhibit sludge management options. Some of these limitations may be more stringent than limitations found in national categorical standards. The basis for these limitations would not be the evidence of pass through or interference, but rather the potential for pass through or interference. The pretreatment regulations are designed to protect against pass through and interference rather than react to it.

How is the control authority able to show compliance when there are no numeric limits?

By ensuring that their categorical industrial users are maintaining their on-site compliance paperwork accurately, that the specified P2 practices have been implemented, and that the

Under Section 403, the POTW is required to take a certain number of samples from the regulated facility. How do they complete this item when the facility is complying with the P2 alternative? What is the absolute minimum that the POTW must do to meet requirements for a control authority?

When is a PFPR facility not in compliance with the rule (i.e., how is noncompliance determined when numeric limits are not in the permit)?

Can EPA provide guidance to permit enforcement officials on allowing negotiation of a compliance plan without penalties?

treatment systems are appropriate and have been demonstrated to be well operated and maintained.

The PFPR rule does not require monitoring for pesticide active ingredients. Therefore, the POTW would only need to monitor for their local limits. Note that if a POTW monitors their effluent for pesticide active ingredients at the point of discharge to the receiving stream, the contribution of pesticide active ingredients comes not only from PFPR facilities but also nonpoint source dischargers (e.g., agricultural runoff).

A facility is not in compliance if they are not implementing the P2 practices specified in Table 8, have not documented their justifications for modifications to those P2 practices, have not documented the equivalency of their treatment system to the list of “appropriate” technologies listed in Table 10, and are not able to demonstrate that the system is well operated and maintained based on the rationale discussed in their on-site compliance paperwork.

EPA’s Small Business Policy promotes environmental compliance by providing incentives, such as penalty waivers and penalty mitigation, to those small businesses that participate in on-site compliance assistance programs or conduct environmental audits to discover, disclose, and correct violations. A small business may be eligible under the Agency’s “Policy on Compliance Incentives For Small Businesses” to have all potential penalties for non-compliance waived if the companies agree to come into compliance and meet other criteria.

The policy applies to a person, corporation, partnership, or other organization that employs 100 or fewer individuals. EPA may eliminate its penalty against the small business if:

- the business receives on-site compliance assistance or conducts an environmental audit;
- the business identifies the violation(s) through the assistance or audit, and discloses it within 10 days (or such shorter period provided by law) to the appropriate government agencies;
- it is the first violation of the requirement in a three-year period and no environmental enforcement actions against the business have been taken in the last five years; the violation is corrected within 180 days after detection of the violation (or 360 days if pollution prevention is employed); and
- the violation has not caused actual serious harm, and does not pose a potentially imminent and substantial endangerment to the public or environment, does not involve criminal conduct, and did not result in a significant economic benefit.

For more information on the EPA's audit policies, please see the web site for EPA's Office of Enforcement and Compliance Assurance at <http://www.epa.gov/oeca/index.html>.

As a PFPR facility, the flexibility of the rule to develop documentation in numerous ways is helpful. However, if an auditor finds a better or different P2 practice than what the facility has found, what action will EPA take? How will enforcement occur?

Better or improved pollution prevention practices should not be the basis of an enforcement action. Enforcement actions related to the P2 practices would be more likely to be incurred if a P2 practice is listed in the control mechanism/permit and is not being performed. In the case of a new practice brought up by the control/permitting authority, the new P2 practice must be agreed upon by both the facility and the control/permitting authority and included in the permit/control mechanism. After that, if facility is not following the practices, then enforcement actions may be taken.

Are there any RCRA issues associated with the practices mentioned (e.g., storage and reuse)?

Yes. There is a discussion of RCRA issues on pages 57528 and 57529 of the preamble to the final rule (located in Appendix A).

If treating wastewaters that are listed or characteristic wastes, is a RCRA permit required?

If these wastewaters are treated in a treatment system covered by a Clean Water Act effluent guideline, the treatment system is exempted from needing a RCRA permit. However, this does not necessarily mean that the wastewater being treated is exempt from RCRA regulations.

Do changes specified in the periodic certification require NPDES permits to be reopened?

The method in which changes are incorporated into NPDES permits may vary depending on the locality, state, or region in which the facility is located; however, it may be possible to set up the permit to specify that the P2 practices and appropriate treatment requirements for the PFPR rule are located in an approved plan, as is done with spill control plans. This method may allow changes in practices or treatment to be incorporated without reopening the whole permit.

How does a facility determine what to put in the permit for operation of the treatment system if the volume and characteristics of the water changes over time?

If a facility adds new production, they may need to reevaluate what treatment is appropriate for their PFPR wastewater sources. When initially determining treatment requirements, the facility should keep in mind that most PFPR facilities (after implementing P2 practices) generate volumes of wastewater small enough to store and treat periodically. Therefore, even though there may be a large variation in daily or weekly wastewater characteristics, it is more likely that wastewater treated periodically (e.g., one time per quarter) will be more consistent from one treatment batch to the next. In addition, a facility may find it most useful to evaluate a long-term plan of present and future production.

Over time, the facility will need to demonstrate that the system is well operated and maintained for their changing wastewater

by keeping logs/records of the volumes and characteristics of their wastewater.

Does the P2 alternative override or make a current discharge permit obsolete?

Facilities that directly discharge wastewater will incorporate the requirements of the PFPR rule (either zero discharge and/or the P2 alternative) at the time their permit is issued, reissued, or renewed.

Facilities that indirectly discharge wastewater and choose to comply with the P2 alternative will have a new permit/control mechanism put in place prior to the compliance deadline of November 6, 1999. This permit/control mechanism can still include aspects of previous permits, as well as additional local limitations, as long as it incorporates the information necessary for complying with the P2 alternative.

Potential to Discharge (see also Zero Discharge)

What will a permit for a zero discharge/no-flow PFPR facility look like?

Facilities with no potential for discharge are not covered under the PFPR categorical standards. For facilities that achieve zero discharge, but have the potential to discharge, the permit would most likely only require a certification statement that the facility is at zero discharge. It may also list inspections that the facility would undergo.

A facility may comply with zero discharge by demonstrating that all pesticide active ingredients and priority pollutants are below their method detection limits in the facility's final effluent, and only if all pollutants have approved analytical methods. A detection of any of these pollutants means the facility is out of compliance with the rule.

When determining whether a facility has a "potential to discharge," how are sanitary hookups viewed? For example, what if a worker dumps a bucket of floor wash into a toilet?

The potential to discharge only includes regulated wastewater sources. Sanitary water, as well as employee shower and laundry water, are not regulated wastewater sources under the PFPR rule. Therefore, a facility could have a sanitary hookup and still be considered as having "no potential to discharge" regulated wastewater. If a facility is concerned that their employees may discharge regulated wastewater sources through a sanitary hookup, they may want to establish a training program, including standard operating procedures (SOPs) to cover the management of wastes at their site.

Who determines whether a facility has the "potential to discharge"?

The facility is not covered under the scope of the rule, but may want to notify their control/permitting authority and/or submit a certification stating that they have "no potential to discharge" regulated PFPR wastewater sources. This certification would be submitted to (and approved by) the control/permitting authority following inspection.

Compliance Time Line

When do facilities have to start certifying their operations (i.e., now versus November 6, 1999)?

Existing indirect dischargers (i.e., those facilities that discharge to a POTW) must determine a specific compliance schedule with their POTW/control authority. This schedule must include milestones that lead to compliance with the rule *no later than* November 6, 1999.

Existing direct dischargers (i.e., those facilities that discharge directly to a river or receiving stream) must be in compliance at the time of issuance, renewal, or modification of their existing NPDES permit.

New sources must be in compliance with the PFPR rule at the commencement of discharge.

If a new indirect discharging facility comes into being in 1998, do they have until November 6, 1999 to come into compliance with the rule? If not, why not?

A new indirect source (any PFPR facility that meets the definition of new source in 40 CFR 403.3(k) as of April 14, 1994) must come into compliance when they begin discharging. New sources were given the opportunity to plan for requirements of the final rule (new source determination is made based on the proposed rule date). Existing indirect sources were already operating prior to the proposed rule and therefore could not plan the design of their facilities to meet the final regulation (this is especially true in the case of an effluent guideline where standards are more stringent for new sources). NOTE: The pretreatment standards are equal for existing and new sources under the final PFPR rule.

40 CFR 403.6(b) is the citation that explains the difference between new and existing sources - "(b) *Deadline for Compliance with Categorical Standards*. Compliance by existing sources with categorical Pretreatment Standards shall be within 3 years of the date the Standard is effective unless a shorter compliance time is specified in the appropriate subpart of 40 CFR chapter I, subchapter N....Existing sources which become Industrial Users subsequent to promulgation of an applicable categorical Pretreatment Standard shall be considered existing Industrial Users except where such sources meet the definition of a New Source as defined in § 403.3(k). New Sources shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet applicable Pretreatment Standards before beginning to Discharge. Within the shortest feasible time (not to exceed 90 days), New Sources must meet all applicable Pretreatment Standards."

If an indirect discharging facility is interested in entering the PFPR market in the next 1-2 years, what steps should that facility take before production begins and after production begins?

New sources must complete a BMR 90 days prior to discharge and must be in compliance with the PFPR pretreatment standards (PSNS) at the commencement of discharge. This means the facility must submit their initial certification statement (or certify that they achieve zero discharge) to the control authority and have their on-site compliance paperwork completed. Ninety days following commencement of discharge, the facil-

ity must complete their 90-day compliance report. If the facility chooses the P2 alternative, they will also need to complete their periodic certification statement in June and December of each year.

If the facility is *not* a new source, the facility will have to be in compliance with the PFPR regulation by November 6, 1999. At this point, the BMR (which was due by July 7, 1997) and the initial certification statement must be submitted and the on-site paperwork completed. Ninety days following commencement of discharge, the facility must complete their 90-day compliance report. If the facility chooses the P2 alternative, they will also need to complete their periodic certification statement in June and December of each year.

After November 6, 1999, when are facilities (new sources) required to submit their initial certification?

At the time of permit issuance prior to discharge.

Is any paperwork required between now and November 6, 1999 for indirect dischargers?

In addition to submitting the BMR, if a facility is not in compliance at the time they submit the BMR, then they must develop a compliance schedule with milestones with their control authority. The facility would need to show they are meeting each milestone on their way to full compliance.

When does the BMR get submitted? Is it after the permit has been issued and after decisions have been made on treatability for the wastewater to be discharged?

No. For indirect dischargers, it is prior to the initial certification. The BMR is the first piece of compliance paperwork required and is submitted well ahead of choosing wastewater treatment technologies. The BMR is supposed to reflect current operations, not necessarily compliance levels. The BMR was due on July 7, 1997 for existing indirect dischargers.

Why aren't facilities required to submit their initial certification at the time the BMR is due?

Initial certifications are due *no later than* November 6, 1999, although they may be submitted earlier. The BMR measures the baseline performance of the facility, but the initial certification cannot be made until the facility has invested time (and often money) to gather the information needed to make the compliance decisions (i.e., zero discharge or P2 alternative) that are documented in the initial certification.

How does the November 6, 1999 date apply to facilities that either choose to achieve zero discharge or already achieve zero discharge?

Indirect dischargers would need to be achieving zero discharge by November 6, 1999 for those wastewater sources for which they chose zero discharge in the initial certification statement. If the facility is already meeting zero discharge, then they would not need to set up the 90-day compliance schedule with milestones discussed in 40 CFR 403.

Direct dischargers must be in compliance at the time of issuance, reissuance, or modification of their NPDES permit.

Do all facilities within the scope of the PFPR rule have to meet zero discharge by the November 6, 1999 compliance date?

No. Existing indirect discharging facilities have to be in compliance with *either* zero discharge or the P2 alternative on a source by source basis *no later than* November 6, 1999. Existing direct dischargers must be in compliance at the time of issuance, reissuance, or modification of their NPDES permit.

Should initial certification paperwork be completed *before* installing full-scale treatment?

Indirect dischargers must set up a compliance schedule with their POTW or control authority that specifies milestones to be achieved to assure compliance by November 6, 1999, including the installation and operation of any necessary treatment required prior to discharge. The initial certification paperwork must be completed by or before the compliance deadline.

Direct dischargers must complete the initial certification paperwork by the time of permit issuance, reissuance, or renewal.

Does the 3-year compliance date of November 6, 1999 apply to facilities choosing the P2 alternative (i.e., do they have until November 6, 1999 to install treatment systems)?

The 3-year compliance date only applies to indirect dischargers and this is the date at which they must be *in compliance* with the rule. If the facility wishes to be discharging wastewater at that time and treatment of that wastewater is necessary for compliance, the appropriate treatment system would need to be installed, tested, and a procedure for determining that it is well operated and maintained determined. Indirect dischargers must establish milestones with their control authority that the facility must meet to achieve compliance with the rule by November 6, 1999.

Does the treatment system have to be fully tested and operational at the time the initial certification statement is submitted?

Indirect dischargers must set up milestones for achieving compliance with the PFPR rule by November 6, 1999; therefore, it is possible that the treatment system may be tested following submission of the initial certification statement. However, the system must be fully operational by the agreed date of compliance or November 6, 1999, whichever is earlier.

Direct dischargers may also submit the initial certification statement before the issue, reissue, or renewal of their permit is complete. In such a situation, the treatment system may not yet be fully operational.

When is a facility allowed to discharge after selecting a compliance option?

If a facility is not currently discharging PFPR wastewater, they may begin discharging wastewater under the terms of their permit/control mechanism as soon as their permit/control mechanism is in place.

Must the control/permitting authority approve the P2 practices and modifications before they are implemented?

If the P2 practice and modification are listed in Table 8 to Part 455, then the control/permitting authority does not need to give prior approval; however, they do have the right to ensure that the proper backup documentation is present at the facility to justify the modification and to ensure that local limitations are being complied with.

When is the periodic certification required, now or after November 6, 1999?

If the P2 practice and modification are not listed in Table 8, the control/permitting authority does need to approve the practice with modification prior to discharge.

If a customer asks a facility to begin making a new product, when must the control authority be notified and when can discharge begin?

The periodic certification requirement begins after the facility has submitted their initial certification and is required twice per year for indirect dischargers and once per year for direct dischargers. The timing of submittal can be coordinated with the submittal of compliance paperwork required by the General Pretreatment Regulations or the NPDES regulations.

The facility must notify their control/permitting authority if a change in discharge is occurring, implement the appropriate P2 practices, update their treatment system to include the appropriate or equivalent treatment if new pesticide active ingredients exist in the wastewater to be treated, and receive approval before discharging wastewater associated with the new product. A facility is allowed to begin production at any time; however, they may need to store the generated wastewater until discharge approval is received.

Other Questions

The Section 403 regulations were revised to change the language from a “pretreatment agreement” to “control mechanism” because of concerns regarding the legal implications of that language. The PFPR regulations seem to be adding the pretreatment agreement language back in. Why are the two regulations inconsistent?

The term “pretreatment agreement” in the PFPR regulation was not used intentionally; it is intended to be a synonym for an individual control mechanism or permit.

Is there any way the government can track the commodity chemicals used in pesticide products by PFPR and pesticide manufacturing facilities?

Facilities are required to submit Confidential Statements of Formula (CSFs) to EPA, which include the specific “recipe” for the product registered; however, these recipes are typically considered confidential business information (CBI) under FIFRA.

Also, facilities are required to report emissions of toxic chemicals under the SARA Section 313 program (i.e., the Toxic Release Inventory program). However, PFPR facilities often do not use toxic chemicals in the amounts necessary to trigger reporting under this program, although some pesticide manufacturers do.